IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2008

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THE HON'BLE MR.JUSTICE K.N.BASHA

CRL.O.P.No.29370 of 2004
& Crl.M.P.No.9215 of 2004

1. Anbalazhagan
2. Rajarajan .. Petitioners/Accused 1 & 3

vs.

1. State by Inspector of Police,
Sankari Police Station,
Crime No.459 of 2003,
Salem District. .. Respondent/Complainant

2. Tamil nadu Electricity Board,
Mettur Electricity Distribution Circle,
rep. by its
Assistant Executive Engineer .. Respondent

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Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records and quash the proceedings against the petitioners in C.C.No.265 of 2003 on the file of the learned Judicial Magistrate No.1, Sankari.
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For Petitioners : Mr.N. Chandrasekaran,
for Mr.C.S.Krishnamoorthy

For Respondent - 1 : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

For Respondent - 2 : Mr.P.S.Raman
Additional Advocate General
for N.Muthusami

O R D E R

The petitioners, who have been arrayed as A1 and A-3 and are facing trial for the alleged offence under Sections 39(1), 44(1)(c) of the Electricity Act, 1980 on the allegation of theft of energy, have come forward with this petition seeking for the relief of quashing the proceedings initiated against

them in C.C.No.265 of 2003 on the file of the learned Judicial Magistrate No.1, Sankari.

2. The learned counsel for the petitioners submitted that he is not pressing this petition in respect of the first petitioner/A-1 and also made an endorsement to that effect as such this petition is liable to be dismissed as not pressed in respect of the first petitioner/A-1.

3. Mr.N.Chandrasekaran, learned counsel for the petitioners submitted that as far as the second petitioner, who has been arrayed as A-3 is concerned, there is absolutely no material available on record to indicate or to establish prima facie that he was also responsible and in-charge of the day-to-day affairs of the firm, viz., Sri Krishna Alloys Company, for which A-1 is the Managing Partner. It is contended by the learned counsel that even in the First Information Report, there is absolutely no mention about A-3 and the other accused, viz., A-1, Anbalagan, A-2 Pandian and Thirunavukkarasu, have been only implicated in the First Information Report and in the contents of the First Information Report, there is no reference about A-3. It is submitted that even as per the statements recorded from the witnesses, viz., the Electricity Board Officials there is absolutely no specific and definite allegation to the effect that the second petitioner/A-3 is also responsible and in-charge of the day-to-day affairs of the firm, viz., Sri Krishna Alloys Limited. It is contended by the learned counsel for the petitioners that in respect of a similarly placed accused, viz., A-2/Pandian, this Court has quashed the proceedings in Crl.O.P.No.10427 of 2005 by order dated 03.04.2008 and as such the second petitioner, who has been arrayed as A-3, who is also standing on the similar footing, may be given the benefit of quashing in view of the specific findings of this Court in the above said order. Learned counsel for the petitioner also placed reliance on the following decisions in support of his contentions :
1. S.V.K.M.Rathinaswamy Nadar and 7 others V. Inspector Police, CBCID, Madurai reported in 1989 LW(Crl.) 446 ;
2. M/s.Saifee Golden Jubilee Rolling Mills V. State by Inspector of Police reported in 1989 LW(Crl.) 226 ;
3. P.Jeyanthi vs. State rep. by Sub Inspector of Police reported in 1990 LW (Crl.) 398 ;
4. Venkatachalapathy vs. State reported in 2002 (1) CTC 624 ; and
5. an unreported judgment in Crl.R.C.No.691 of 2003 dated 06.04.2004 (Tamil Nadu Electricity Board, Namakkal vs. Rasipuram Textiles (P) Limited and 11 others).

4. Per contra, Mr.P.S.Raman, learned Additional Advocate General for the second respondent, contended that the question raised by the petitioner is purely of fact and it is for the petitioner to establish that question, i.e. the petitioner is no way connected with the day-to-day affairs of the partnership firm, viz., Sri Krishna Alloys Company at the time of trial. It is contended by the learned Additional Advocate General that the third accused, who is the second petitioner herein, is also one of the partners of the firm and as such he is liable to be prosecuted and it is for him to establish his case at the time of full-fledged trial, as stated above, and he is not entitled to seek the relief of quashing the proceedings. It is contended by the learned Additional Advocate General that as far as the Partnership act is concerned, every Director is deemed to be the working partner and as such the question of making specific allegation at this stage not at all arises.

5. Heard the learned Additional Public Prosecutor on the above submissions.

6. I have carefully considered the rival contentions put forward by either side and also perused the materials available on record including the First Information Report, Charge sheet and statements of witnesses, namely, Electricity Board officials.

7. This Court is constrained to state that the perusal of the First Information Report discloses that there is not a whisper made against A-3, the second petitioner herein. As far as the charge sheet is

concerned except making a bald and vague allegation to the effect that the accused committed the offence, there is absolutely no specific and definite allegation as to the role played by A-3, the second petitioner herein.

8. A perusal of the Charge Sheet also discloses that Sri Krishna Alloys Company was owned by A-1 to A-3 and service connection was given to the company under HTSC No.110. The charge against the accused is to the effect that they tampered the meter by breaking the seal and thereafter making the short circuit by using the C.T.Cable wires due to which the actual consumption of electricity was not recorded from 06.11.2002 to 15.05.2003 and thereby A-1 to A-4 committed the offence of theft of energy causing loss to the Tamil Nadu Electricity Board to the tune of Rs.4,08,57,084/-. The fact remains that the First Information Report was registered on the basis of the complaint preferred by the Assistant Executive Engineer (Operation and Maintenance), Tamil Nadu Electricity Board one Mr.Singaravelu. The statement recorded from him under Section 161 Cr.P.C. clearly discloses that at the time of inspection they informed A-4, the Electrician, to send the message to the Proprietor and Partners of the Company. The statement recorded from one Ponnusamy, Assistant Executive Engineer (Operation & Maintenance) shows that A-1, Anbazhagan, was also present at the time of inspection at 10.10 a.m. on 15.05.2003 and A-1 was referred to as the company's Proprietor. Therefore, the admitted case of the prosecution is to the effect that the offence was committed by the Company, viz., Sri Krishna Alloys Company, for which A-1 is the Proprietor and A-2 is the Partner and as such both of them are liable to be prosecuted apart from the other accused, A-3 and A-4. The Company was not implicated as one of the accused in this case but only the Proprietor and other partners have been impleaded as accused. Therefore, it is crystal clear that the offence is committed by the Company, the partnership firm viz., Sri Krishna Alloys Company and such being the position, the provision under Section 49(A) of the Indian Electricity Act, 1910, is applicable to this case, for the reasons stated above.

9. Section 49-A of the Indian Electricity Act, reads as follows:-

"Sec.49-A: Offences by Companies:------

(1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against the punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director or Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly

Explanation For the purposes of this section,
(a) "company" means any body corporate and includes a firm or other association of individuals ; and
(b) "director", in relation to a firm, means a partner in the firm."

10. The reading of the above said provision makes it crystal clear that Section 49-A of the Indian Electricity Act is not only applicable to the companies but also to the partnership firms in view of the

explanation (a) to the provision under Section 49-A of the Indian Electricity Act as stated above. Therefore, it is crystal clear that the above said provision throws the onus on the prosecution to establish that every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, before liability could be fastened. Once the initial onus of the Prosecution is discharged, then it will be necessary for such person to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence, if he desired to get himself exonerated.

11. As already pointed out, in the First Information Report as well as in the statements recorded under Section 161 Cr.P.C. from the Assistant Executive Engineer (Operation and Maintenance), namely, one Mr.Singaravelu and one Mr.M.Ponnusamy clearly show that A-1 is the Proprietor and as such he must be necessarily in-charge and responsible for the day-to-day affairs and conduct of the business of the Company, namely, Sri Krishna Alloys Company. Such being the position, in order to make the second petitioner, who has been arrayed as A-3 and who is only a partner of the company, also liable for the offence committed by the company, namely, Sri Krishna Alloys Company, it is the burden of the prosecution by producing materials to show that the second petitioner, A-3 was in-charge and responsible of the conduct of the business of the Company and merely because he happened to be the partner of the Company, he cannot be vicariously held liable for the offence committed by the Company. It is to be stated from the perusal of the materials that there is not a whisper about the alleged part played by the petitioner or any allegation to the effect that the petitioner was also responsible and in-charge of the day-to-day affairs of the Company, viz., Sri Krishna Alloys Company.

12. The learned counsel for the petitioner rightly placed reliance on the decision of this Court in a similar case in P.Jeyanthi V. State rep. by Sub-Inspector of Police reported in 1990 L.W. (Cri.) 398 wherein this Court has held that the partners cannot be held liable in the absence of any allegations of any part played by them in respect of alleged offene.

13. This Court in yet another case also taken a similar view in Venkatachalapathy V. State reported in 2002 (1) CTC 624 and quashed the proceedings in respect of a Director as there is no material disclosing the involvement of such Director in day-to-day affairs of the Company.

14. It is pertinent to be noted that even in an earlier decision in M.K.Saifee Golden Jubilee Rolling Mills V. State by Inspector of Police, Madhavaran Police Station reported in 1989 L.W. (Crl.) 227 this Court held that,

"the partners cannot be held liable in the absence of any allegations of any part played by them in the criminal offence. It was also found that there was no allegation that the partners were in actual management of the affairs of the firm."

15. The Hon'ble Apex Court in Saroj Kumar Poddar Vs. State (N.C.T. of Delhi) reported in 2007 (1) CTC 529 has held that,

"13. The purported averments which have been made in the Complaint Petitions so as to make the appellant vicariously liable for the offence committed by the Company read as under:
"That the accused No.1 is a public limited company incorporated and registered under the Companies Act, 1956, and the accused 2 to 8 are/ were its Directors at the relevant time and the said company is managed by the Board of Directors and they are responsible for the in charge of the conduct and business of the company-Accused No.1. However, cheques referred to in the complaint have been signed by the Accused No.3 & 8 i.e. Shri K.K. Pilania and Shri.N.K. Munjal for and on

behalf of the Accused Company No.1."
... there is no averment in the Complaint Petitions as to how and in what manner the appellant was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to its functioning. He had not issued any cheque. How he is responsible for dishonour of the cheque has not been stated. The allegations made in paragraph 3, thus, in our opinion do not satisfy the requirements of Section 141 of the Act."

The Hon'ble Apex Court in the decision cited supra holding as stated above, quashed the proceedings in respect of one of the accused on the ground that there is no specific allegation as to what role played by the particular accused in respect of the commission of the offence under Section 138 of the Negotiable Instruments Act by the Company.

16. Therefore, in view of the above settled principle of law laid down by a catena of decisions of this Court as well as the Hon'ble Apex Court (as cited supra), this Court has no hesitation to hold that allowing the proceedings to continue against the second petitioner/A-3 would amount to a clear case of abuse of process of Court and therefore, the same is liable to be quashed.

Accordingly, as already pointed out, this petition, insofar as the first petitioner/A-1 is concerned, is hereby dismissed as not pressed.

For the foregoing reasons, this petition is allowed in respect of the second petitioner/A-3 and the proceedings insofar as the second petitioner/A-3 is concerned pending in C.C.No.265 of 2003 on the file of the learned Judicial Magistrate, Sankagiri, Salem District, is hereby quashed. Consequently, connected miscellaneous petition is closed.

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To

1. The Judicial Magistrate No.1, Sankari.

2. The Inspector of Police,
Sankari Police Station,
Salem District.

3. The Public Prosecutor, Madras.

4. The Additional Advocate Genera,
Chennai